

**REMARKS/ARGUMENTS**

This is responsive to the Office Action mailed on April 24, 2009.

Claims 1-25 remain pending in this application. Method claims 26-28 are withdrawn in response to the Restriction Requirement previously raised by the Examiner.

Applicant appreciates the time and consideration provided by the Examiner in reviewing this application but traverses the rejection at least for the following reasons.

**Rejection under 35 U.S.C. §112**

In the Office action the Examiner rejected claims 8, 9, 12, 18, 19 and 25 under 35 U.S.C. §112, second paragraph as indefinite.

With regard to the objections under 35 U.S.C. 112, amendments have been proposed “without prejudice” to claims 1, 8, 9, 12, 15, 18, 19 and 20 to expedite the progress of the application. Claim 16 is also cancelled. An annotated copy of the claims pages is **enclosed** indicating the nature and location of the amendments.

In particular, claim 1 has been amended to define the fence plinth as being “adapted for contact with a ground surface in a fence construction”.

Claim 8 has been amended to delete the phrase “such as a z-section”.

Claim 9 has been amended to refer to “opposite side edge margins of the plinth”, to correct the typographical error identified by the Examiner.

Claim 12 has been amended to delete the word “its”, and now reads “an in-use orientation of the plinth”.

Claim 15 has been amended to provide an antecedent definition for the “opposite side margins of the plinth”. Support for this amendment is provided by claim 9.

Claim 16 has been cancelled, and claim 17 amended to depend on claim 15.

Claim 18 has been amended to recite a “region of increased stiffness in the plinth” and to define the barrier panel recited in claim 15 as being provided by a plinth assembly comprising a plurality of the plinths located one above the other. In addition, claims 18 and 19 have also been amended to avoid any possible ambiguity in the references to the “end edge margins” and “overlapping regions” of the plinth.

Claim 20 has further been amended to define the fence plinth of the claimed fence as being in contact with a ground surface.

Finally, the term “means” has been deleted in claim 25, and the claim amended to recite “an infill panel”. Support for this amendment is found in the specification at page 8, line 28-32.

#### **Rejection under 35 U.S.C. §102**

The Examiner rejected the claims under 35 U.S.C. §102 in light of Gandara (US 5,494,261) and Whitehead (GB 2323611), and claims 7, 13 and 14 under 35 U.S.C 103 (a) as obvious over Gandara.

Applicant submits the following explanation in order to clarify the subject matter of the application.

As stated at page 1, lines 3-9 of the specification as filed, the present application relates to a *fence plinth* used at the base of a fence. The plinth, is used *under* the lower rail/barrier panel of the fence so as to be in contact with the ground surface. This is particularly useful when the fence is constructed on uneven or sloping ground, and inhibits the passage of noise, wind, weeds and the like from passing under the fence. In particular, the plinth can be partly embedded in the ground to retain soil/prevent soil movement under the fence. In its broadest form as defined in claim 1, the plinth of the invention is formed from sheet material having spaced apart end edge margins and is profiled to

incorporate *stiffening formations that extend along the sheet between the end edge margins.*

As stated at page 2, lines 17-24, the stiffening formations can be corrugations or ribs such that the cross-sectional profile of the plinth displays a regular waveform with crests and troughs displaced from a notional centre plane of the sheet. In addition, embodiments are provided in which opposite edge margins of the plinth are received in channels of the fence posts as described at page 3, lines 32 to page 4, line 3 of the specification. In this instance, a plurality of the plinths can be located one above another such that the plinths overlap forming a plinth assembly with regions of increased stiffness that extend between the fence posts as is described at page 4, line 30 to page 5, line 4, the lowermost one of the plinths being in contact with the ground surface. Claims 15 and 20 as amended are directed to this subject matter.

It is submitted neither Gandara nor Whitehead teach the plinth or plinth assembly as now claimed.

Rather, Gandara relates to a corrugating machine with opposed rolls for corrugating sheet metal as the sheet passes through the nip of the rolls. The corrugations of the sheet material described in Gandara extend laterally/transversely across that sheet, as distinct from in the lengthwise direction as required by the claims of the instant application.

Gandara also discloses a metal fence comprising upper and lower "stiffener" rails (26, 28, 30, 32) securing corrugated barrier panels (18, 20) between posts of the fence. As shown in Fig. 1 of Gandara, the bottom rail (20) is spaced from the ground surface such that a gap remains between the barrier panels and the ground. Accordingly, neither the stiffener rails of the prior art fence nor corrugated paneling/sheeting of Gandara can be considered to constitute a fence plinth as now claimed.

Similarly, Whitehead relates to a metal fence comprising a plurality of fencing panels (10), each such fencing panel comprising metal infill sheets (11) with integrally formed frame members along their opposite sides which form post/upright elements (24). The upper and lower edges of the infill sheets (11) are received in frame elements in the form of channel sections (12<sup>a</sup>, 12<sup>c</sup>), as shown in Fig. 1 of Whitehead. As such, the upper and lower frame elements (12<sup>a</sup> and 12<sup>c</sup>) merely act as covers for the infill sheets (11) or at best, upper and lower rails, *and are not fence plinths* as presently claimed.

Also importantly, it is submitted that neither the corrugated sheet metal of Gandara nor the metal infill sheets (11) of Whitehead can be considered to constitute fence plinths as now claimed as they are simply not suitable for use in a fence construction as a fence plinth. The term "fence plinth" inherently requires that the claimed plinth be provided for that purpose in a fence construction, in terms of its function, strength/thickness and in its shape/overall height and width dimensions. That is, it is submitted the fence plinth must be cut/shaped and formed for this use. Not only that, a fence plinth as now claimed must be provided with longitudinal stiffening formations that extend along the plinth between opposite end edge margins of the plinth, and be adapted for being located in contact with the ground surface as a fence plinth. For these reasons, a simple standard length of corrugated metal sheet as described in Gandara or metal infill sheet (11) as described in Whitehead cannot be considered to constitute a fence plinth of the instant invention.

### **Rejection under 35 U.S.C. §103**

With regard to the obviousness objections raised under 35 U.S.C. 103(a), it is noted that claims 7, 13, 14 and 24 are all dependent claims and are ultimately depend on claims 1 or 20.

For the reasons outlined above it is submitted that neither Ganclaro nor Whitehead, alone or in combination teach or suggest a fence plinth or plinth assembly as claimed in independent claims 1 and 20 of the present application as originally filed and presently amended, and such the above referenced dependent claims must also be considered novel and non-obvious.

Therefore, the application is now in condition for allowance, which allowance is earnestly solicited.

The Commissioner is hereby authorized to charge any fees, which may be required in connection with this correspondence, to Deposit Account No. 06-1135.

Respectfully submitted,  
FITCH, EVEN, TABIN & FLANNERY



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